



LEWIS, LONGMAN & WALKER, P.A.  
ATTORNEYS AT LAW

*Reply To: Bradenton*

December 12, 2008

**Via Electronic Mail**

**Thomas D. Shults, Esquire**  
Kirk Pinkerton  
50 Central Avenue  
Ste 700  
Sarasota, Florida 34236-5742

**Via U.S. First Class Mail**

**TJ Miller, Records Custodian**  
Trailer Estates Recreation District  
1903 69<sup>th</sup> Avenue West  
Bradenton, FL 34207

**RE: MARY LOU SMITH and SHARON DENSON vs.**  
**TRAILER ESTATES PARK AND RECREATION DISTRICT, et al.**  
**Case No.: 2008 CA 11315 (Matter Nos.: 3198-002 and 3778-001)**

Dear Mr. Shults and Ms. Miller,

By this letter, you and your client, Trailer Estates Park and Recreation District (hereinafter the "District") are hereby given notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your client's computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data<sup>1</sup>, such as voice

<sup>1</sup> Electronic Data includes any and all documents and information about documents containing backup and/or archive policy and/or procedure, document retention policy, names of backup and/or archive software, names and addresses of any offsite storage provider.

- Any and all e-mail and information about e-mail (including message contents, header information and logs of e-mail system usage) sent or received by any member or member(s)-elect of the District Board of Trustees and Records Custodian.
- Any and all other e-mail and information about e-mail (including message contents, header information and logs of e-mail system usage) containing information about or related to the District
- Any and all databases (including all records and fields and structural information in such databases), containing any reference to and/or information about or related to the District.
- Any and all logs of activity (both in paper and electronic formats) on computer systems and networks that have or may have been used to process or store electronic data containing information about or related to the District.
- Any and all word processing files, including prior drafts, "deleted" files and file fragments, containing information about or related to the District.
- With regard to electronic data created by application programs which process financial, accounting and billing information, all electronic data files, including prior drafts, "deleted" files and file fragments, containing information about or related to the District.
- Any and all files, including prior drafts, "deleted" files and file fragments, containing information from electronic calendars and scheduling programs regarding or related to the District.

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mail. As you know, your client's failure to comply with this notice can result in severe sanctions being imposed by the Court for spoliation of evidence or potential evidence.

Through discovery we expect to obtain from you a number of documents, including files stored on your client's computers and your client's computer storage media. As part of our initial discovery efforts, you are hereby served with the attached First Request for Production. In order to avoid spoliation, you will need to provide the data requested on the original media. Do not reuse any media to provide this data.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we may seek all documents in their electronic form along with information about those documents contained on the media. We also will seek paper printouts of those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist. Our discovery requests ask for certain data on the hard disks, floppy disks and backup media used in your client's computers, some of which data are not readily available to an ordinary computer user, such as "deleted" files and "file fragments." As you may know, although a user may "erase" or "delete" a file all that is really erased, there is a reference to that file in a table on the hard disk; unless overwritten with new data, a "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing.

Courts have made it clear that all information available on electronic storage media is discoverable, whether readily readable ("active") or "deleted" but recoverable. See, e.g., *Easley, Optowave Co., Ltd. v. Nikitin*, 2006 WL 3231422 (M.D. Fla. 2006)); *Santiago v. Miles*, 121 F.R.D. 636, 640 (W.D.N.Y. 1988; a request for "raw information in computer banks" was proper and obtainable under the discovery rules); and *Gates Rubber Co. v. Bando Chemical Indus., Ltd.*, 167 F.R.D. 90, 112 (D. Colo. 1996; mirror-image copy of everything on a hard drive "the method which would yield the most complete and accurate results," chastising a party's expert for failing to do so.

Accordingly, electronic data and storage media are subject to our discovery requests, your client is obligated to maintain and not alter or destroy, include but are not limited to the following:

1. Any and all emails sent between District Board of Trustee members and member(s)-elect relating to the District from January 1, 2006, to the present.

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➤ Any and all electronic data files, including prior drafts, "deleted" files and file fragments about or related to the District.

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2. Any and all emails sent by a District Board of Trustee members and member(s)-elect that carbon copies another District Board of Trustee member(s) relating to the District from January 1, 2006, to the present.
3. Any and all blogs, chat rooms, chalkboards, bulletin boards, instant messages, groups, or other electronic mediums where two or more District Board of Trustee members and member(s)-elect have communicated regarding District issues from January 1, 2006, to the present.

All digital or analog electronic files, including "deleted" files and file fragments, stored in machine readable format on magnetic, optical or other storage media, including the hard drives or floppy disks used by your client's computers and their backup media (e.g., other hard drives, backup tapes, floppies, Jaz cartridges, CD-ROMs, DVDs, Flash Drives) or otherwise, whether such files have been reduced to paper printouts or not. More specifically, your client is to preserve all of your emails, both sent and received, whether internally or externally; all word-processed files, including drafts and revisions; all spreadsheets, including drafts and revisions; all databases; all presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint); all graphs, charts and other data produced by project management software (such as Microsoft Project); all data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes); all data created with the use of personal data assistants (PDAs), such as iPhone, Blackberry, Palm Pilot, or other Windows CE-based or Pocket PC devices; all data created with the use of document management software; all data created with the use of paper and electronic mail logging and routing software; all Internet and Web-browser generated history files, caches and "cookies" files generated at the workstation of each employee and/or agent in your client's employ and on any and all backup storage media; and any and all other files generated by users through the use of computers and/or telecommunications, including but not limited to voice mail. Further, you and your client are to preserve any log or logs of network use by employees or otherwise, whether kept in paper or electronic form, and to preserve all copies of your backup tapes and the software necessary to reconstruct the data on those tapes, so that there can be made a complete, bit-by-bit "mirror" evidentiary image copy of the storage media of each and every personal computer (and/or workstation) and network server in your control and custody, as well as image copies of all hard drives retained by you and no longer in service, but in use at any time from January 1, 2006, to the present.

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Your client is also not to pack, compress, purge or otherwise dispose of files and parts of files unless a true and correct copy of such files is made. Your client is also to preserve and not destroy all passwords, decryption procedures (including, if necessary, the software to decrypt the files); network access codes, 10 names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view and (if necessary) reconstruct the electronic data we are requesting through discovery. Specifically:

- **Online Data Storage on Mainframes and Minicomputers:** With regard to online storage and/or direct access storage devices attached to your client's mainframe computers and/or minicomputers: they are not to modify or delete any electronic data files, "deleted" files and file fragments existing at the time of this letter's delivery, which meet the definitions set forth in this letter, unless a true and correct copy of each such electronic data file has been made and steps have been taken to assure that such a copy will be preserved and accessible for purposes of this litigation.
- **Offline Data Storage, Backups and Archives, Floppy Diskettes, Tapes and Other Removable Electronic Media:** With regard to all electronic media used for offline storage, including magnetic tapes and cartridges and other media that, at the time of this letter's delivery, contained any electronic data meeting the criteria listed in paragraph 1 above: Your client is to stop any activity that may result in the loss of such electronic data, including rotation, destruction, overwriting and/or erasure of such media in whole or in part. This request is intended to cover all removable electronic media used for data storage in connection with their computer systems, including, but not limited to, magnetic tapes and cartridges, magneto-optical disks, floppy diskettes and all other media, whether used with personal computers, minicomputers or mainframes or other computers, and whether containing backup and/or archive data sets and other electronic data, for all of their computer systems.
- **Replacement of Data Storage Devices:** Your client is not to dispose of any electronic data storage devices and/or media that may be replaced due to failure and/or upgrade and/or other reasons that may contain electronic data.
- **Fixed Drives on Stand-Alone Personal Computers and Network Workstations:** With regard to electronic data, which existed on fixed drives attached to stand-alone microcomputers and/or network workstations at the time of this letter's delivery: Your client is not to alter or erase such electronic data, and not to perform other procedures (such as data compression and disk defragmentation or optimization routines) that may impact such data, unless a true

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and correct copy has been made of such active files and of completely restored versions of such deleted electronic files and file fragments, copies have been made of all directory listings (including hidden files) for all directories and subdirectories containing such files, and arrangements have been made to preserve copies during the pendency of this litigation.

- **Programs and Utilities:** Your client is to preserve copies of all application programs and utilities, which may be used to process electronic data covered by this letter.
- **Log of System Modifications:** Your client is to maintain an activity log to document modifications made to any electronic data processing system that may affect the system's capability to process any electronic data meeting the criteria listed in paragraph 1 above, regardless of whether such modifications were made by employees, contractors, vendors and/or any other third parties.
- **Personal Computers Used by Your Employees and/or Their Secretaries and Assistants:** The following steps should immediately be taken in regard to all personal computers used by your client's employees and/or their secretaries and assistants.
  - As to fixed drives attached to such computers: (i) a true and correct copy is to be made of all electronic data on such fixed drives relating to this matter, including all active files and completely restored versions of all deleted electronic files and file fragments; (ii) full directory listings (including hidden files) for all directories and subdirectories (including hidden directories) on such fixed drives should be written; and (iii) such copies and listings are to be preserved until this matter reaches its final resolution.
  - All floppy diskettes, magnetic tapes and cartridges, and other media used in connection with such computers prior to the date of delivery of this letter containing any electronic data relating to this matter are to be collected and put into storage for the duration of this lawsuit.
- **Evidence Created Subsequent to This Letter:** With regard to electronic data created subsequent to the date of delivery of this letter, relevant evidence is not to be destroyed and your client is to take whatever steps are appropriate to avoid destruction of evidence.

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In order to assure that you and your client's obligation to preserve documents and things will be met, please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Please feel free to contact me, should you have any questions or concerns. Thank you.

Respectfully Submitted,

**LEWIS, LONGMAN & WALKER, P.A.**

Jennifer R. Cowan



JRC/ash

Enclosure

cc: Mary Lou Smith  
Sharon Denson  
Mark P. Barnebey, Esquire